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In The

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

OAKLAND CANNABIS BUYERS' COOPERATIVE, *ET AL.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI*[1]

The National Organization for the Reform of Marijuana Laws (NORML) was organized in 1970, and participates in the public policy debate over marijuana policy for the tens of millions of adult Americans who use marijuana responsibly. NORML lobbies for the rights of marijuana users and other taxpayers and voters who oppose current prohibition policies. NORML has more than 5,000 financial supporters from every state. It also has a grassroots political network of more than 18,000 volunteer activists, including 60 state and local affiliated organizations, who oppose the criminal prohibition of marijuana.

NORML has long supported policies that would permit seriously ill patients to use cannabis as a medicine with a recommendation from their physician. NORML opposes the use of marijuana by children and adolescents, and has published a set of guidelines for responsible marijuana smoking entitled "Principles of Responsible Cannabis Use."[2]

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[1] Pursuant to S.Ct. Rule 37.6, counsel certifies that no counsel for a party authored any part of this brief. No person or entity other than *amici* made a monetary contribution to the preparation or submission of the brief.

Pursuant to S.Ct. Rule 29.6, both NORML and NACDL are nonprofit corporations. Neither has a parent corporation, and neither is a publicly held corporation, nor does a publicly held company own 10% or more of their stock.

[2] Some of the *amici curiae* supporting the federal government claim that supporters of the medical use of cannabis, such as NORML, use the issue as a ruse to build support for the decriminalization or legalization of recreational marijuana smoking. NORML supports both legalizing the

NORML asserted the medical use of cannabis in 1972 in an administrative petition asking the federal government to move cannabis from schedule I to schedule II of the Controlled Substances Act so doctors could prescribe it. After years of administrative litigation, a DEA Administrative Law Judge found in 1988 that:

> Marijuana has been accepted as capable of relieving distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record.[3]

The ALJ there recommended "that the Administrator transfer marijuana from Schedule I to Schedule II, to make it available as a legal medicine." *Id.* The Administrator of the DEA rejected this conclusion, and the Court of Appeals for the District of Columbia Circuit affirmed,[4] effectively denying medical cannabis to seriously ill patients, except for the DEA's own Compassionate IND program. In the past 20 years, NORML has several times

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medical use and the recreational use of marijuana, but recognizes that they are two distinct issues and each has to be evaluated as a public policy option on its own merits. There are millions of Americans, for example, who support the medical use of cannabis (*see* the polling data in Appendix A) but who oppose legalizing marijuana for recreational use. Speculation about ulterior motives is irrelevant to the impact of the requested injunction on seriously ill patients with their doctor's consent, whose quality of life depends on medical cannabis.

[3] *In The Matter of Marijuana Rescheduling Petition*, Docket No. 86-22 (Sept. 6, 1988).

[4] *Marijuana Scheduling Petition*, 54 Fed.Reg. 53767, 53784 (Dec. 29, 1988), *aff'd Alliance for Cannabis Therapeutics v. DEA*, 304 U.S.App.D.C. 400, 15 F.3d 1131 (1994).

litigated the issue of medical use of cannabis in federal courts.[5] With reclassification blocked by the DEA, NORML has continued to advocate the medical use of cannabis and to support state and federal legislation and voter initiatives to that end.

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent bar organization advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime. Founded in 1958, NACDL has more than 10,000 direct members and 80 state and local affiliate organizations with 28,000 members committed to preserving the Bill of Rights. The American Bar Association recognizes NACDL as an affiliate organization on its House of Delegates. NACDL promotes study and research in the field of criminal law. In furtherance of its objectives over the past decade, NACDL files approximately ten *amicus* briefs a year with this Court on criminal justice issues.

The parties have consented to NORML and NACDL filing this *amici* brief on behalf of the respondents, and the letters of consent are filed with this brief.

SUMMARY OF ARGUMENT

I.A. This case is not about a right to get "stoned," as petitioner's *amici* would suggest. Instead, it is about the

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[5] NORML has always been a party in the "marijuana rescheduling" cases seeking federal recognition of the medical use of cannabis. *See, e.g.*, the related cases of *Alliance for Cannabis Therapeutics v. DEA*, note 4 *supra*; *Alliance for Cannabis Therapeutics v. DEA*, 289 U.S.App.D.C. 214, 930 F.2d 936 (1994); *NORML v. DEA*, 182 U.S.App.D.C. 114, 559 F.2d 735 (1977); *NORML v. Ingersoll*, 162 U.S.App.D.C. 67, 497 F.2d 654 (1977).

confluence of state and individual rights: A state's capacity to legislate its public health policy by choosing its own means and ends to achieve what it believes best for the good of its people when there is no superior competing federal interest; and, the right of personal medical choices of the chronically and terminally ill, made in consultation with doctors. This state-federal conflict implicates several individual liberties intertwined under our Constitution: The right of the "pursuit of happiness" and liberty by the chronically and terminally ill; the right of citizens "to be let alone" by government in personal decisions; and substantive due process when there is no comparable federal interest in prohibiting the conduct at issue.

B. Many sick people are not helped by conventional drug therapy for serious medical conditions. The medical use of cannabis has been recognized for 5,000 years. Hundreds of articles, books, and reports deal with the efficacy of cannabis for medicinal use. Nine states with 20.51% of the nation's population have legalized the medical use of cannabis.

II.A. No form of legislation is more fundamental than the right of the people of the American states to enact laws by initiative. This power is reserved to the people and the states under the Ninth and Tenth Amendments. In the nine states where the people have determined by their political and legislative processes that medical use of cannabis for the chronically or terminally ill is a right and a choice made between doctor and patient, medical cannabis is elevated by their public policy to a privacy and due process right. The federal government has a duty to respect these states' decisions, and it has no law enforcement or public safety interest in criminalizing the medical use of cannabis in those states.

B. Unless the federal government has sought to preempt the field, which it has not done with drug laws, the Supremacy Clause does not prohibit states from enacting laws in the same area which differ in their approach.

C. There is a constitutional right of privacy and substantive due process right in the medical use of cannabis when the decision is made under state law between a doctor and a chronically or terminally ill patient seeking to preserve a tolerable quality of life, under three separate but interrelated constitutional theories:

1. The decision to use medical cannabis can be the difference between a horrible existence or a minimal quality of life as death approaches. When sentient life becomes almost unbearable, anything that improves that life takes on a constitutional dimension. People have the right to define their own concept of existence. That right is the essence of the natural law upon which the Declaration of Independence and its "pursuit of happiness" and due process of law are founded. *Cruzan* holds that due process includes protection of the quality of life, and that applies here.

2. Implicit in the Bill of Rights is the "right to be let alone" by government. In *Winston v. Lee*, this Court recognized that some parts of the "right to be let alone" are more important than the government's interest in doing what it wants. The personal medical decision to use medical cannabis to alleviate suffering is such a right.

3. The right to medical use of cannabis is also protected by substantive due process because both pain relief and cannabis are recognized in our "history, legal traditions, and practices." The right to substantive due process must insure that chronically and terminally ill Americans should have the right to doctor-approved medical use of

cannabis if it alleviates their debilitating pain and suffering or improves their quality of life in the days before their death.

III. The claim that federal drug law enforcement is harmed by medical use is untenable. Whatever one's stance on the "war on drugs," the prosecution of drug offenses by the federal government will go on unabated even if state chartered cannabis buyers' clubs are permitted to operate. The class of potential offenders that the federal government has selected are not drug abusers, but patients with doctor's recommendations for treatment. The law enforcement and judicial machinery otherwise never would waste resources on such offenders. This issue involves no meaningful interest of the federal government, other than an opportunity to make a symbolic political statement in the "war on drugs." Casualties in the "war on drugs" should not be the chronically and terminally ill who are aided by medical use of cannabis.

ARGUMENT

I. Introduction

A. What this case is and what it is not

This case is not about a backdoor effort to get "stoned," as petitioner's *amici* so cavalierly assert.[6] The chronically sick and dying who, in private consultation with doctors, have determined they have no other recourse other than medical use of cannabis, take serious issue with the *amici*'s attack on their medicine. The respondents assert the fundamental right of their patients

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[6] Brief of Institute on Global Drug Policy of the Drug Free America Foundation, *et al.*, as *Amici Curiae*, 8-9; Brief of Family Research Council as *Amicus Curiae*, 26-28. *See* note 2, *supra*.

to enhance the quality of whatever is left of their lives, when other treatment and medication have failed to relieve suffering. This case also concerns the fundamental right to exercise legislative power as reserved by the Ninth and Tenth Amendments, to the people of nine states. Finally, this case presents an exercise of law enforcement authority in a limited area by the federal government where it lacks constitutional power to act.

Popularly enacted legislation permitting compassionate medical use of cannabis is an assertion of a fundamental right by the people and the states. Those state laws recognize a right for patients who have lost any real quality of life from chronic or terminal illness to be free from unnecessary pain and suffering. Enabling patients whose medical conditions deny them a quality of life to use medical cannabis with their doctor's oversight is a matter fully reserved to the people and the states under the Ninth and Tenth Amendments that the federal government must respect. The federal government has no power to legislate in this area under either the commerce clause or "necessary and proper" clause of Art. I, § 8 of the Constitution.[7]

This case involves numerous fundamental interests at risk in the attempt by federal law to prohibit what nine states have allowed. This exercise of rights by the people and the states to legislate in matters of personal human dignity is protected from federal abrogation under our fundamental concept of ordered liberty and federalism.

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[7] "The government . . . can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1818).

The people and states are unilaterally entitled to legislate what means they believe better serve their own defined goals, where there is no compelling conflicting federal interest, and where they have made a personal medical choice after consultation with a doctor. This conflict implicates multiple individual liberties intertwined under our Constitution: The right of the "pursuit of happiness" and liberty by the chronically and terminally ill; the right of people "to be let alone" by their government in these personal decisions; and substantive due process, particularly when there is no serious federal interest in prohibiting the conduct at issue.

B. The efficacy and public acceptance of the medical use of cannabis

Petitioner's *amici* trivialize the irrefutable facts of this case that many sick people simply are not helped by conventional drug therapy for serious medical conditions.[8] Petitioners' *amici* ignore the 5,000 years of recognized medical use of cannabis,[9] including a wealth of

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[8] *Amici Curiae* Brief of Institute on Global Drug Policy of the Drug Free America Foundation, *et al.*, 8-9.

[9] LESTER GRINSPOON, M.D. & JAMES B. BAKALAR, MARIHUANA: THE FORBIDDEN MEDICINE 3-5 (Rev.ed. 1997) ("The first evidence of the medicinal use of cannabis is an herbal published during the reign of Chinese Emperor Chen Nung five thousand years ago. [¶] It was listed in the United States Dispensatory in 1854. . . . Commercial cannabis preparation could be bought in drug stores. . . . [¶] Meanwhile, reports on cannabis accumulated in the medical literature."). *See Regina v. Parker, infra*, ¶ 123:

> Like many other herbs, marihuana has been used in Asian and Middle Eastern countries for at least 2600 years for medicinal purposes. It first appeared in Western medicine in 60 A.D. in the Herbal (i.e.

modern articles on the utility of the medicinal use of cannabis, and the history of cannabis use in the United States beginning before our colonization.[10] The most recent books citing published findings are: LESTER GRINSPOON, M.D. & JAMES B. BAKALAR, MARIHUANA: THE FORBIDDEN MEDICINE (Rev.ed. 1997) and NATIONAL ACADEMY OF SCIENCES'S INSTITUTE OF MEDICINE, MARIJUANA AND MEDICINE:

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pharmacopoeia) of Dioscorides and was listed in subsequent herbals or pharmacopoeia since that time. Marihuana was widely used for a variety of ailments, including muscle spasms, in the nineteenth century. In the 1930's, the advent of synthetic drugs led to the abandonment of many ancient herbal remedies including marihuana, although an extract of cannabis and a tincture of cannabis remained in the British Pharmaceutical Codex of 1949.

[10] GRINSPOON & BAKALAR, *supra*, Ch. 1.

Some of our founding fathers were hemp growers. Bergoffen & Clark, *Hemp as an Alternative to Wood Fiber in Oregon*, 11 J.ENVTL.L. & LITIG. 119, 120-21 (1996):

> In North America, hemp was widely used before European settlement, contrary to popular views. . . . John De Verrazano discovered it growing wild in Virginia in 1524. It is also well established that marijuana has been used for both religious and recreational purposes for thousands of years.
>
> . . . In Virginia in the 1760s, a bounty of "four shillings for every gross hundred of hemp" was to be paid to farmers. Most famous of these Virginia hemp farmers were George Washington and Thomas Jefferson; Jefferson considered hemp so important that he even arranged to smuggle Chinese hemp seeds back to the United States because of their superior qualities. Another forefather, Benjamin Franklin, founded one of America's first paper mills, which used hemp as its fibersource.

ASSESSING THE SCIENCE BASE (1999).[11] Even the DEA's ALJ recognized that the case for the medical use of cannabis presented by NORML was *never refuted* by the agency. The DEA would not hear of it, however, and refused to adopt the ALJ's recommendation despite the uncontradicted evidence. (*See* notes 3-5, *supra.*)

Petitioner's *amici* also overlook the sheer numbers of ordinary people who recognize that there should be compassionate use of cannabis. (Appendix A)[12] Many influential American and other medical organizations and health care providers recognize that there is a bona fide need for the medical use of cannabis when a doctor and patient decide it is necessary. (Appendices B & C)

II. The medical use of cannabis is an individual right that should be recognized by this Court in states where the people have enacted laws permitting it

This case presents the recognition of important legal doctrines at the heart of our form of constitutional government: individual liberty and the powers reserved to the people and the states. As a matter of individual liberty, it should be beyond the power of the federal government to regulate the medicinal use of cannabis when the voters or legislatures of states decide it should be legalized for medical use. Nine states with 20.51% of

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[11] The latter is online at http://bob.nap.edu/books/0309071550.html/.

[12] The nine states having legalized medical use of cannabis comprise approximately 20.51% of the U.S. population (based on 1999 estimates: approximately 55,919,000 of 272,690,000; the 2000 census data will not be available until the Spring of 2001) (http://quickfacts.census.gov/qfd/index.html).

the population have approved of the medical use of cannabis since 1996 (*see* note 12, *supra*): Eight by initiative[13] and one by the legislature. The public and medical organizations strongly support medical cannabis use for those who would be aided by it. (Appendices A-C)

It is only natural, then, that the proponents of the medical use of cannabis go directly to the people when a state legislature fails to act. It is, no doubt, a natural right.

A. The power of the people to initiate legislation reserved by the Ninth and Tenth Amendments

The power of initiative and referendum appears in about half of the state constitutions,[14] as it does in California. Cal. Const., Art. 4, § 1. This quintessential reservation of political and legislative power is expressly reserved to the people and the States under the Ninth and Tenth Amendments.[15] In addition, the initiative power is clothed with full First Amendment protection as "core political speech" and a method of petitioning government for redress of grievances. *See Meyer v. Grant*, 486 U.S. 414, 421-22 (1988):

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[13] The District of Columbia also approved of it, but Congress nullified it.

Oregon's Department of Human Services today reports 1,700 registered patients and 519 physicians have provided documentation for their patients to register. There were 900 in the program on the first anniversary, May 1, 2000. Kelly Paige, Medical Marijuana Program Manager, Oregon Health Division, Department of Human Services (Feb. 2001). The program's website is: www.ohd.hr.state.or.us/hclc/mm/.

[14] *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 734 (1964).

[15] *Cammarano v. United States*, 358 U.S. 498, 506 (1959) (state constitutions "explicitly recognize that in providing for initiatives they are vesting legislative power in the people").

> The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. [A] petition circulator . . . will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as "core political speech."

B. Federal deference to state law on the medical use of cannabis, and the inapplicability of the Supremacy Clause

Once the voters of a state have adopted an initiative or a state legislature has enacted a statute protecting the medical use of cannabis, the people of that state have compellingly expressed their public policy, even if that public policy differs from that of the federal government. Federalism mandates that state public policy is entitled to presumptive deference. State legislation expresses its public policy; *Schall v. Martin*, 467 U.S. 253, 281 (1984); especially legislation adopted directly by the people.[16]

The Supremacy Clause, U.S. Const., Art. IV, cl. 2, provides the federal government no support in its attempt to nullify this state law because Congress has not even remotely attempted to preempt every part of the

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[16] Also, "state legislatures are *not* subject to federal direction. *New York v. United States*, 505 U.S. 144 (1992)." *Prinz v. United States*, 521 U.S. 898, 912 (1997) (emphasis in original).

field of criminalizing drug crimes. Indeed, every state has laws against the illegal use, manufacture, and distribution of controlled substances. And, the federal government could not preempt drug regulation even if it wished, because there is no general federal police power, a power singularly reserved to the states. *Lopez v. United States*, 514 U.S. 549, 560 n.3 (1995). Indeed, *Lopez* portended the conflict here: "When Congress criminalizes conduct already denounced as criminal by the States, it effects ' "a change in the sensitive relation between federal and state criminal jurisdiction." ' " *Id.* (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)).

Federal and state drug laws have co-existed for more than half a century, and state laws recognizing medical use of cannabis manifestly do not " 'stand[ ] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm.*, 461 U.S. 190, 203-04 (1983) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

As in *Lopez*, Congress cannot remain in denial of reality and cannot declare night to be day and simply expect this Court to rubber stamp that conclusion. *Lopez*, 514 U.S. at 566-67. *Kelly v. Washington ex rel. Foss Co.*, 302 U.S. 1, 9-10 (1937), answers this question for us:

> Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. . . . States are thus enabled to deal with local exigencies and to exert in the absence of

> conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together." (citations omitted)

Thus, unless Congress dictates that the states may not regulate drug crimes, something it will never do, the federal government cannot claim preemption.

C. The right of liberty, privacy, and substantive due process in medical use of cannabis

There is a constitutional right of privacy and a substantive due process right in the medical use of cannabis when that decision is made under state law between a doctor and a chronically or terminally ill patient seeking to preserve a tolerable quality of life. This right is more significant when patients seek to preserve some semblance of human dignity and freedom from the ravages of disease in their final days. This principle is founded on three interrelated constitutional theories:

1. Rights to the dignity of life, individual liberty and autonomy, and the "pursuit of happiness"

For some patients, the decision to use medical cannabis can be the difference between a horrible existence or a minimal quality of life as death approaches. When a state has permitted the use of medical cannabis for these people, after conventional medication has failed or forced them to suffer intolerable side effects, their very ability to define their life is at stake. When the quality of life becomes almost unbearable, anything that improves that quality of life has a constitutional dimension. "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 850-51 (1992).

Indeed, "defin[ing] one's own concept of existence" is the essence of the natural law expressed in ¶ 2 of the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." As the Court stated in *Board of Regents v. Roth,* 408 U.S. 564, 572 (1972), the Court has not attempted to define with exactness the liberty guaranteed by due process, because, "[i]n a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed."

> Our Constitution is born of the proposition that all legitimate governments must secure the equal right of every person to "Life, Liberty, and the pursuit of Happiness." In the ordinary case

> we quite naturally assume that these three ends are compatible, mutually enhancing, and perhaps even coincident.
>
> . . . Together, these considerations suggest that Nancy Cruzan's liberty to be free from medical treatment must be understood in light of the facts and circumstances particular to her.

Cruzan v. Director, Missouri Dep't of Health, 497 U.S. 261, 331 (1990) (STEVENS, J., dissenting) (footnote omitted)

A state has an "unqualified interest in the preservation of human life." *Cruzan*, 497 U.S. at 282. Because of that interest, states sometimes seek the preservation of life notwithstanding the utter lack of quality of that life. Thus, Nancy Cruzan's family had to fight the State of Missouri which wanted to keep her alive by state mandated medical intervention. The federal government tells us that patients who want to preserve their own life, who are struggling to stay alive despite painful or debilitating side effects of modern medicine, have no right to preserve any semblance of dignity of their waning life by medical procedures approved by the voters of their state. Is it not ironic that a prison inmate can be judicially forced to be medicated to have a quality of life on death row or in prison or for the preservation of his life, even to later execute him?[17] Yet here, the government denies a comparable right to the chronically or terminally ill

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[17] A state may force inmates to take anti-psychotic medication to restore sanity when they are so disturbed that they have no quality of life and are a danger to themselves or others; *Washington v. Harper*, 494 U.S. 210 (1990); even if this medical intervention is forced on them, would make the inmates competent, and thus enable the state to execute them. *Singleton v. Norris*, 338 Ark. 135, 992 S.W.2d 768 (1999), *cert. den.* 528 U.S. 1084 (2000).

patient who could benefit from the medical use of cannabis. This judicial distinction, to heal prisoners but harm terminal patients, is irrational and contrary to any concept of ordered liberty in a free nation.

If a state has such an "unqualified interest in the preservation of life," it must of necessity also have an interest in the quality of the life it preserves as the end approaches. In some situations, particularly the AIDS wasting syndrome, the medical use of cannabis usually provides the *only means to sustain life*. If so, then there should be a constitutional right to use it.

2. The right to privacy in "the right to be let alone" by government

There is a basic right to privacy in this nation, "the right to be let alone," and it runs throughout the law of individual liberty. Whatever its source, be it in the common law,[18]

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[18] *See Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891), where a railroad sought a physical examination of an injured passenger. This Court affirmed the lower court's refusal to permit the examination of her body so the railroad could separately evaluate the seriousness of her injury:

> No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley: "The right to one's person may be said to be a right of complete immunity; to be let alone." Cooley, Torts, 29.

See Poe v. Ullman, 367 U.S. 497, 521 & n.12 (1961) (DOUGLAS, J., dissenting) ("The notion of privacy is not drawn from the blue. [n12: The right 'to be let alone' had many common-law overtones.] It emanates from the totality of the constitutional

the law of torts,[19] the Ninth Amendment, one of those "penumbra" rights within the Bill of Rights as a whole,[20] or whether it is a liberty interest under the due process clauses of the Fifth and Fourteenth Amendments,[21] government must recognize that certain rights reserved to the people and states are beyond its reach.

The phrase was truly memorialized in Justice BRANDEIS's famous dissent 73 years ago in *Olmstead v. United States*, 277 U.S. 438, 478 (1928):

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found

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scheme under which we live.") & 543 (HARLAN, J., dissenting) (in addition, it protects against "arbitrary impositions and purposeless restraints" by government (quoting *Hurtado v. California*, 110 U.S. 516, 632 (1884)).

[19] *See generally* Warren & Brandeis, *The Right to Privacy*, 4 HARV.L.REV. 193 (1890); Prosser, *Privacy*, 48 CALIF.L.REV. 391 (1960); Griswold, *The Right to be Let Alone*, 55 NW.U.L.REV. 216 (1960).

[20] *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (there is a penumbra of privacy rights, "zones of privacy," in the First, Third, Fourth, and Ninth Amendments).

[21] *Id.*, 381 U.S. at 493 (GOLDBERG, J., concurring) (due process and Ninth Amendment), 500 (HARLAN, J., concurring) (basic to concept of "ordered liberty" for due process) & 507 (WHITE, J., concurring) (due process violated because government cannot pass such a law); *Cruzan*, 497 U.S. at 279 n.7 (liberty interest under the Fourteenth Amendment in refusing medical treatment with a "right to die").

> in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.[22]

While the "right to be let alone" originally emerged into this Court's cases in a dissent, the existence of a constitutional right "to be let alone" is now well accepted. The Court has repeatedly cited *Olmstead* and considered "the right to be let alone" as a part, not only of the Fourth Amendment,[23] but also the First,[24] Fifth,[25] and Fourteenth[26] Amendments.

The "right to be let alone" has been found to outweigh even one of the weightiest of governmental interests: The interest in procuring evidence to prosecute a violent crime. In *Winston v. Lee*, 470 U.S. 753, 765-66 (1985), the Court denied the government the ability to obtain evidence by forced major surgery on the body of

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[22] Justice BRANDEIS also said, *id.* at 479: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

[23] *California Bankers Assn. v. Shultz*, 416 U.S. 21, 65 (1974); *Winston v. Lee*, 470 U.S. 753, 758-59 (1985). *See Katz v. United States*, 389 U.S. 347, 350-51 & n.6 (1967).

[24] *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Rowan v. U.S. Post Office Dept.*, 397 U.S. 728, 736 (1970).

[25] *Tehan v. United States ex rel. Shott*, 382 U.S. 406, 416 (1966). *See United States v. Morton Salt Co.*, 338 U.S. 632, 651-52 (1950).

[26] *Eisenstadt v. Baird*, 405 U.S. 438, 453-54 n.10 (1972).

the accused to remove a bullet, even where the search would certainly produce evidence of a violent crime:

> The Fourth Amendment protects "expectations of privacy," see *Katz v. United States*, 389 U.S. 347 (1967) – the individual's legitimate expectations that in certain places and at certain times he has "the right to be let alone – the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (BRANDEIS, J., dissenting). Putting to one side the procedural protections of the warrant requirement, the Fourth Amendment generally protects the "security" of "persons, houses, papers, and effects" against official intrusions up to the point where the community's need for evidence surmounts a specified standard, ordinarily "probable cause." Beyond this point, it is ordinarily justifiable for the community to demand that the individual give up some part of his interest in privacy and security to advance the community's vital interests in law enforcement; such a search is generally "reasonable" in the Amendment's terms.

But, the Court held that this compelled surgical intrusion for evidence implicated expectations of privacy and personal security to such a degree that the intrusion was constitutionally unreasonable under the Fourth Amendment even though it certainly would produce evidence of a violent crime. *Id.* at 758-59. The government's normally compelling need to obtain vital evidence to enforce the criminal law and prosecute a violent criminal constitutionally had to give way to the personal dignity of the individual because the search was "unreasonable" under the Fourth Amendment.

That rationale applies with equal force here: No matter what the governmental interest in prosecuting drug

crimes, the personal and fundamental interest in preserving the dignity of life should weigh more heavily, particularly when a state has declared its public policy that its citizens are entitled to the benefit of the medical use of cannabis.

3. Substantive due process: "history, legal traditions, and practices"

Analogous to the above two standards and using similar language, but still clearly a standard of its own, is the right to substantive due process under the Fifth and Fourteenth Amendments. If the right to substantive due process means anything, it should mean that chronically and terminally ill Americans should have the right to medical use of cannabis if it alleviates suffering from their serious medical condition and thereby gives them some quality of life in the days before their death. This Court has already recognized a substantive due process right to be free from pain and suffering in *Cruzan*, involving a woman who was in a persistent vegetative state whose family wanted to have a feeding tube withdrawn so she could die and be allowed to be free of her misery. *A fortiori*, it naturally flows from that case that there also is a parallel right patients in chronic pain or the terminally ill have to alleviate their pain and suffering *when they want to live*. Nancy Cruzan had a right to stop being force fed and to die to alleviate her pain and suffering that was caused merely by her being kept alive in that condition. For patients with their doctors' approval, who want to go on living but without their pain and suffering, patients must also have an "unqualified interest in the preservation of human life." One should flow from the other.

After *Cruzan*, the Court held in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that there was no due process right to assisted suicide. The Court stated its approach to due process issues; *id.* at 710:

> We begin, as we do in all due-process cases, by examining our Nation's history, legal traditions, and practices. *See, e.g., Casey*, 505 U.S. at 849-850; *Cruzan*, 497 U.S. at 269-279; *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion) (noting importance of 'careful "respect for the teachings of history" ').[27]

This substantive due process analysis derives from Justice HARLAN's dissent in *Poe v. Ullman*, 367 U.S. 497, 542-43 (1961), elucidating the true meaning of "the full scope of liberty" under due process:

> It is this outlook which has led the Court continuingly to perceive distinctions in the imperative character of Constitutional provisions, since that character must be discerned from a particular provision's larger context. And inasmuch as this context is one not of words, but of history and purposes, the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches

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[27] *See Roe v. Wade*, 410 U.S. 113, 140 (1973) (from the founding of the nation and throughout the Nineteenth Century, "a woman enjoyed a substantially broader right to terminate a pregnancy"; thus, history supported the finding of an individual right to terminate a pregnancy).

> and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. . . . (citations omitted)

Justice HARLAN's opinion in *Poe* is recognized as the source of modern individual judicial review of substantive due process claims.[28]

Our "history, legal traditions, and practices" unequivocally tell us that the individual is more important than the government and that government interference with a person's autonomy must be based on

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[28] *Washington v. Glucksberg, supra,* at 766 n.4 (SOUTER, J., dissenting):

> The status of the Harlan dissent in *Poe v. Ullman,* . . . , is shown by the Court's adoption of its result in *Griswold v. Connecticut,* . . . , and by the Court's acknowledgment of its status and adoption of its reasoning in *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 848-849 (1992). See also *Youngberg v. Romeo,* 457 U.S. 307, 320 (1982) (citing Justice HARLAN's *Poe* dissent as authority for the requirement that this Court balance "the liberty of the individual" and "the demands of an organized society"); *Roberts v. United States Jaycees,* 468 U.S. 609, 619 (1984); *Moore v. East Cleveland,* 431 U.S. 494, 500-506, and n.12 (1977) (plurality opinion) (opinion for four Justices treating Justice HARLAN's *Poe* dissent as a central explication of the methodology of judicial review under the Due Process Clause).

extremely important societal interests.[29] In some cases, an individual's right to personal autonomy can outweigh even the undeniably powerful governmental interest in prosecuting violent crime, as in *Winston v. Lee*. We must never forget that our government exists to serve its citizens; the citizens do not exist to serve the government.[30] Moreover, medical use of cannabis is a part of our nation's history and the history of civilization for the last 5,000 years. State authorized medical use of cannabis for patients with a dire need thus clearly qualifies for recognition under substantive due process.

4. The Canadian experience

Canada's Charter of Rights was adopted less than two decades ago, and it closely parallels our Bill of Rights; so much, indeed, that the Canadian courts apply

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[29] *United States v. Oakland Cannabis Buyers' Coop.*, 121 S.Ct. 21 (2000) (STEVENS, J., dissenting from grant of stay):

> Because the applicant in this case has failed to demonstrate that the denial of necessary medicine to seriously ill and dying patients will advance the public interest or that the failure to enjoin the distribution of such medicine will impair the orderly enforcement of federal criminal statutes, whereas respondents have demonstrated that the entry of a stay will cause them irreparable harm, I am persuaded that a fair assessment of that balance favors a denial of the extraordinary relief that the government seeks. I respectfully dissent.

[30] *See* the Declaration of Independence ¶s 3 & 28. *See also McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819) ("The government . . . is emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.").

American case law as an aid in interpreting their Charter.[31] Similarly, because of our geographic proximity and open border, political alliances, and similar adversary system with the same common law origin, this Court has looked to Canadian law and experience as an aid in interpreting our Bill of Rights.[32]

Section 7 of the Canadian Charter of Rights and Freedoms is their version of our Due Process Clause, and it provides that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived of those rights except in accordance with the principles of fundamental justice." Less than a year ago, the Ontario Court of Appeals found a fundamental right in the medical use of cannabis for the chronically ill, just as is asserted here. The Canadian government is attempting to implement medical use for distribution through its national health care system.[33] Thus, there is a right to the needful medical use of cannabis, notwithstanding that possession and delivery of cannabis otherwise remains a

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[31] *Regina v. Carter*, 2 C.R.R. 280, 144 D.L.R.(3d) 301, 304-05 (Ont.Ct.App. 1982) (American decisions may be persuasive). For example, running obvious queries ("U.S.," "F.3d," "Fourth Amendment") through their case data base on Lexis® will produce nearly 1,000 hits.

[32] *See, e.g., Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 403 (2000) (BREYER and GINSBURG, JJ, concurring); *Washington v. Glucksberg, supra*, at 713 (noting that Canadian courts had recently rejected a right to assisted suicide); *McIntyre v. Ohio Election Comm.*, 514 U.S. 334, 381 (1995) (SCALIA, J., dissenting).

[33] Harris, "Rock feels road to the PMO begins as a good health minister," *The Ottawa Citizen* A13, ¶ 14 (Jan. 28, 2001) (describing how the new health minister "has managed to get a formal medical-marijuana policy in place in Canada, including the identification of a supplier for the otherwise illegal drug.").

crime in Canada. *Regina v. Parker,* 75 C.R.R.(2d) 233, 2000 C.R.R.Lexis 96 (Ont.Ct.App. 2000) (right to use cannabis to control epilepsy; Marinol® was not helpful to Parker but cannabis was; medical necessity defense sustained as a fundamental right); *Regina v. Clay,* 75 C.R.R.(2d) 210, 2000 C.R.R.Lexis 97 (Ont.Ct.App. 2000) (no fundamental right to recreational possession of marijuana notwithstanding *Parker*'s recognition of a medical necessity right; both decided same day).

Parker was thus held to have a complete defense to criminal prosecution for his possession and cultivation of cannabis for his personal medical use. The Canadian court's analysis in *Parker* closely parallels this Court's own due process analysis:

> [¶ 96] . . . "[s]ection 7 is also implicated when the state restricts individuals' security of the person by interfering with, or removing from them, control over their physical or mental integrity". There is no question, then, that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity are encompassed within security of the person, at least to the extent of freedom from criminal prohibitions which interfere with these. . . .
>
> [¶ 102] In my view, Parker has also established that the marihuana prohibition infringed the second aspect of liberty that I have identified – the right to make decisions that are of fundamental personal importance. As I have stated, the choice of medication to alleviate the effects of an illness with life-threatening consequences is a decision of fundamental personal importance. In my view, it ranks with the right to choose whether to take mind-altering psycho-

> tropic drugs for treatment of mental illness, a right . . . ranked as "fundamental and deserving of the highest order of protection" in *Fleming v. Reid* (1991). . . .

The Ontario court's approach underscores the utter implausibility of the government's justification for bringing this case: The Canadian government has no trouble prosecuting recreational marijuana cases despite a fundamental right to medical use, but the United States government believes otherwise. As respondents have pointed out, despite California's Compassionate Use Act of 1996 and that state's decriminalization of small personal use amounts of cannabis, the number of marijuana arrests in California has increased. The law enforcement interest, if it exists at all (and, in light of *Winston v. Lee*, we do not agree that it does), is not remotely or legitimately limited or harmed by medical use legislation. They can co-exist.

D. Civilized notions of personal liberty require this Court to recognize a constitutional right to state chartered doctor-supervised treatment that is superior to any interest in federal prohibition

Fundamental notions of personal liberty under our scheme of constitutional government and federalism require this Court to recognize that, when a state explicitly permits its citizens medical use of cannabis when doctor and patient agree, there is a fundamental constitutional right to the use of medical cannabis, free from unreasonable federal interference.

III. The claim that federal drug law enforcement is harmed by the Compassionate Use Act of 1996 is untenable

Proposition 215, the California Compassionate Use Act of 1996, has had no material effect on the federal government's law enforcement machinery. Until this case, the federal government never wasted the time and resources of the DEA and the U.S. Attorney's Offices on such small cases. This case was brought merely to intimidate California voters by showing that the federal government is fighting the "war on drugs." The fact *no one* has been federally prosecuted for distribution from a buyers' club created under Proposition 215 is truly telling. The federal government's resources are better spent on other aspects of the "war on drugs" where it can plausibly, if not credibly, claim that it really believes marijuana is a danger to society. The primary governmental entities with law enforcement jurisdiction over respondents, the State of California, Alameda County, and the City of Oakland have found respondents' conduct entirely legal. Indeed, the City of Oakland has designated the Oakland Cannabis Buyers' Club a health care provider under Proposition 215.

The state and federal government will continue to fight the "war on drugs," notwithstanding Proposition 215 and local decriminalization of possession of small amounts, notwithstanding the drug war's apparently counterproductive impact on the availability of illegal drugs and the harm they cause. The federal spending on the war on drugs has increased seven-fold in 15 years,[34]

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[34] The Office of National Drug Control Policy FY 1985 budget was $2.7 billion. The FY 2001 proposed budget is $19.2

and the number of people incarcerated for drug crimes has grown 1,000% in twenty years.[35] The war on drugs, however, has done absolutely nothing to prevent teenagers from experimenting with cannabis.[36] The government's ability to prosecute those who import, grow, and deal marijuana for profit has been unimpeded by Proposition 215. Marijuana arrests have risen in California since Proposition 215 and the decriminalization of possession of small amounts, while bona fide patients have gained security from the publicly regulated access to the medicine they need. *See* J.A. 158-59. Most interestingly, and contrary to what is claimed here, the federal government has not claimed there is any interference with federal law enforcement interests in the ten states (including California) that decriminalize small amounts of cannabis. Why the distinction? It is a tacit admission, and the government's argument must fail.

The federal government virtually *never* prosecutes cases involving individual users of small amounts of marijuana. The states usually do because it falls within

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billion. THE NATIONAL DRUG CONTROL STATEGY: FY 2001, BUDGET SUMMARY 2000 ANNUAL REPORT, Table 3 tp://www.whitehousedrugpolicy.gov/policy/budget00/exec___summ.html#table3.

[35] There are now more than 450,000 drug offenders behind bars, a total nearly equal to the entire U.S. prison population of 1980. SCHIRALDI & ZIEDENBERG, POOR PRESCRIPTION: THE COST OF IMPRISONING DRUG OFFENDERS IN THE UNITED STATES, Justice Policy Institute (2000).

[36] U.S. DEPT. OF HEALTH AND HUMAN SERVICES, MONITORING THE FUTURE NATIONAL RESULTS ON ADOLESCENTS DRUG USE: OVERVIEW OF KEY FINDINGS, Table 9: Long-Term Trends in Perceived Availability of Drugs by Twelfth Graders: Marijuana 1975-2000 (2001).

their police power and not the federal government's. This fact only adds to the conclusion that there is no meaningful federal interest involved in Proposition 215. Casualties in the "war on drugs" should not be the chronically and terminally ill who are aided by medical use of cannabis.

CONCLUSION

If our Constitution means anything, it should mean that "the war on drugs" cannot be made to be a war on the quality of life of the chronically or terminally ill. Sadly, our government believes in a constitutional regime that enables it to enforce its policies which enhance patient pain contrary to state law. This Court must reject any such view of the constitution that interferes with the rights of both citizens and the states to enact laws for their common good where there is no federal interest.

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX A

POLLS DEMONSTRATING PUBLIC SUPPORT FOR MEDICAL USE OF CANNABIS 1995-2000

UNITED STATES:

Denver Post/9 News/KOA News Radio, October 2000

* 67 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.

* Source: *Denver Post*/9 News/KOA News Radio poll, as reported by *The Denver Post*, October 5, 2000 (Sample size: not available).

Denver Rocky Mountain News/News 4, September 2000

* 71 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.

* Source: *Denver Rocky Mountain News*/News 4 poll, as reported by *The Denver Rocky Mountain News*, September 17, 2000 (Sample size: not available).

Las Vegas Review Journal, September 2000

* 63 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.

* Source: Mason-Dixon Research Poll, as conducted for and reported by the *Las Vegas Review Journal*, September 9-12, 2000 (Sample size: 627).

Bangor Daily News/WCSH 6/WLBZ 2, October 1999

* 61 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.

* Source: Survey USA poll, as reported by the *Bangor Daily News*, October 28, 1999. (Sample size: 500).

CNN Interactive Poll, April 1999

* 96 percent of respondents said they "support the use of marijuana for medicinal purposes."
* 89 percent of respondents said they did not "think legalizing medical marijuana would open the doors to the legalization of other illicit drugs."
* Source: CNN Interactive Ongoing Quick Poll: http://www cgi.cnn.com/cgibin/poll/npoll.pl?question =0&subject=9702%2Fmarijuana (Sample size: 31,294).

Prevention Magazine Internet Poll, April 1999

* 89 percent of respondents said they support allowing doctors to "prescribe marijuana as a medical treatment."
* Source: *Prevention Magazine's* "Healthy Ideas" weekly poll: http://www.healthyideas.com/poll/971003/ (Sample size: 637).

Gallup Poll, March 1999

* 73 percent of respondents said they "would vote for making marijuana legally available for doctors to prescribe."
* Source: Gallup Poll News Service, conducted March 21, 1999, as reported in the National Journal, April 10, 1999 (Sample size: not available).

Chicago Sun-Times Poll, March 1999

* 90 percent of respondents said the federal government should approve the use of marijuana for medical purposes.
* Source: Morningline telephone poll, as conducted for and reported by the *Chicago Sun-Times*, March 18, 1999 (Sample size: not available).

Mason-Dixon Research Poll, March 1999

* 64 percent of respondents favored "protecting patients who use medical marijuana from civil or criminal penalties."

* Source: Mason-Dixon Research Poll of regional Minnesota state voters, released March 15, 1999 (Sample size: 800).

Harris/Excite Poll, March 1999

* 82 percent of respondents said doctors "should be able to prescribe marijuana."
* Source: Harris/Excite Daily Internet Poll for March 18, 1999: http://nt.excite.com/poll/history.dcg?show=day&id=990318 (Sample size: 20,763).

Hawaii Voter Poll, October 1998

* 63 percent of respondents said they "support the use of marijuana for medicinal purposes."
* Source: Hawaii Voter Poll conducted by Fairbanks, Maslin, Maulin & Associates from September 30-October 4, 1998, as reported by the *Honolulu Advertiser*, October 27, 1998 (Sample size: 400).

JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (JAMA) Poll, March 1998

* 60 percent of respondents supported allowing physicians to prescribe medical marijuana.
* Source: JAMA poll, conducted by Harvard School of Public Health, as reported by Reuters News Service, March 17, 1998 (Sample size: not available).

The New Yorker Poll, January 1998

* 85 percent of respondents supported "permitting doctors to prescribe marijuana."
* Source: The Narcissus Survey, conducted by Penn, Schoen & Berland for *The New Yorker Magazine*, as reported January 5, 1998 (Sample size: 1,400).

Luntz Research National Poll, November 1997

* 62 percent of respondents favored legalizing marijuana "strictly for medical use."

* Source: "Digital Citizen Survey," conducted by The Luntz Research Companies for Merrill Lynch and *Wired Magazine:* September 7-21, 1997 (Sample size: 1,444).

Florida Voter Poll, September 1997

* 63 percent of respondents favored approving an amendment to the Florida Constitution legalizing "medicinal" marijuana.
* Source: Florida Statewide Voter Poll, as reported by *The Miami Herald,* September 23, 1997 (Sample size: 400).

CBS News Poll, June 1997

* 66 percent of Independent respondents said that "doctors should be allowed to prescribe small amounts of marijuana for patients suffering serious illnesses."
* 64 percent of Democrat respondents said that "doctors should be allowed to prescribe small amounts of marijuana for patients suffering serious illnesses."
* 57 percent of Republican respondents said that "doctors should be allowed to prescribe small amounts of marijuana for patients suffering serious illnesses."
* Source: CBS News national telephone poll, as reported by *The New York Times,* June 15, 1997 (Sample size: not available).

ABC News/Discovery News Poll, May 1997

* 69 percent of respondents favored "legalizing [the] medical use of marijuana."
* Source: ABC News/Discovery News National Poll, conducted by Chilton Research Company: May 27, 1997, as reported by ABCNEWS.com, May 29, 1997 (Sample size: 517).

Lake Research Poll, February 1997

* 68 percent of respondents said that the federal government should not punish doctors who prescribe marijuana
* 60 percent of respondents said that doctors should "be able to prescribe marijuana for medical purposes"
* Source: Lake Research National for The Lindesmith Center: February 5-9, 1997 (Sample size: 1,002).

California Field Poll, October 1996

* 59 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.
* Source: California Field Poll of statewide voters, conducted by The Field Institute: October 25-28, 1996, as reported by *The San Francisco Chronicle*, October 30, 1996 (Sample size: 824).

Fairbanks, Maslin, Maullin & Associates California Voter Poll, October 1996

* 95 percent of respondents have ever heard "anything about marijuana being used for medical purposes."
* 62 percent of respondents said they approved of the California Medical Marijuana Initiative.
* Source: California Voter Poll conducted by Fairbanks, Maslin, Maullin & Associates for Californians for Medical Rights: June 5, 1997 (Sample size: 800).

Los Angeles Times Poll, October 1996

* 58 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.
* Source: *Los Angeles Times* telephone poll of California adults, as reported by the *Los Angeles Times*, October 25, 1996 (Sample size: not available).

California Field Poll, October 1996

* 62 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.

* Source: California Field Poll of statewide voters, conducted by The Field Institute: October 7-9, 1996, as reported by *The San Francisco Chronicle,* October 15, 1996 (Sample size: 505).

California Field Poll, September 1996

* 62 percent of respondents supported legalizing marijuana for medical use under a doctor's supervision.

* Source: California Field Poll of statewide voters, conducted by The Field Institute: August 29-September 7, 1996, as reported by *The San Francisco Chronicle,* September 19, 1996 (Sample size: 416).

American Civil Liberties Union Poll, November 1995

* 85 percent of respondents favored "making marijuana legally available for medical uses where it has been proven effective for treating a problem."

* 55 percent of respondents favor "making marijuana legally available for medical uses, even though testing has not been complete.'

* Source: "Questionnaire and Topline Results from a [National] Poll Regarding Marijuana for the American Civil Liberties Union," conducted by Belden & Russonello Research and Communications: March 31-April 5, 1995 (Sample size: 1,001).

Binder Research Poll, March 1995

* 65.5 percent of respondents said they support ending "the prohibition of marijuana for personal medical use."

* Source: California Voter Survey, conducted by David Binder Research: March 2-8, 1995 (Sample size: 750).

Boston Globe Reader Feedback Poll, September 1994

* 98.6 percent of respondents said they favored "legalizing marijuana for medical use."
* Source: *Boston Globe* Call-In Poll as reported by *The Boston Globe*, September 15, 1994 (Sample size: 1,320).

CANADA:

Decima Research Inc., April 1999

* 78 percent of respondents "strongly agree or agree with the government's consideration of legalizing marijuana as a medical treatment."
* Source: DRI poll as reported by the *Edmonton Sun*, April 7, 1999 (Sample size: 2,026).

CTV/Angus Reid Poll, November 1997

* 83 percent of respondents supported legalizing medical marijuana.
* Source: Angus Reid Poll, conducted October 23-28, 1997, as reported by the *Canada Globe and Mail*, November 4, 1997 (Sample Size: 1,515).

UNITED KINGDOM:

British Broadcasting Network (BBC), July 1998

* 96 percent of respondents said marijuana should be legalized for medical purposes.
* Source: BBC1 Watchdog Healthcheck online telephone poll, conducted July 7, 1998, as reported by the *Independent* on Sunday, August 2, 1998 (Sample size: 42,000).

APPENDIX B

ORGANIZATIONS SUPPORTING MEDICAL USE OF CANNABIS 1995-1999

(source: www.norml.org/medical/mjorgs.shtml, http://www.compassionateaccess.org/signers.html)

ORGANIZATIONS SUPPORTING "SUPERVISED ACCESS" TO MEDICAL USE OF CANNABIS:

Action Council (1996)
AIDS Treatment News (1998)
Alaska Nurses Association (1998)
American Academy of Family Physicians (1995)
American Medical Student Association (1994)
American Preventive Medical Association (1994)
American Public Health Association (1994)
American Society of Addiction Medicine (1997)
Australian National Task Force on Cannabis (1994)
Being Alive: People With HIV/AIDS Action Committee (1996)
California Academy of Family Physicians (1994)
California Nurses Association (1995)
Colorado Nurses Association (1995)
Florida Medical Association (1997)
French Ministry of Health (1997)
Health Canada (1997)
Kaiser Permanente (1997)
Life Extension Foundation (1997)
Lymphoma Foundation of America (1997)
National Nurses Society on Addictions (1995)
New England Journal of Medicine (1997)
New Mexico Nursing Association (1997)
New York State Nurses Association (1995)
North Carolina Nurses Association (1996)
San Francisco Mayor's Summit on AIDS and HIV (1998)

Virginia Nurses Association (1994)
Whitman-Walker Clinic (1998)

ORGANIZATIONS SUPPORTING "LEGAL ACCESS TO MARIJUANA UNDER A PHYSICIAN'S RECOMMENDATION":

Alaska Nurses Association (1998)
California Academy of Family Physicians (1996)
California Nurses Association (1995)
Los Angeles County AIDS Commission (1996)
Maine AIDS Alliance (1997)
San Francisco Medical Society (1996)
Whitman-Walker Clinic (1998)

ORGANIZATIONS SUPPORTING A PHYSICIAN'S RIGHT TO RECOMMEND OR DISCUSS CANNABIS THERAPY WITH A PATIENT:

American Medical Association (1997)
American Society of Addiction Medicine (1997)
Bay Area Physicians for Human Rights (1997)
Being Alive: People with HIV/AIDS Action Committee (1997)
California Academy of Family Physicians (1997)
California Medical Association (1997)
Gay and Lesbian Medical Association (1997)
Marin Medical Society (1997)
New Mexico Board of Nursing (1997)
San Francisco Medical Society (1997)

ORGANIZATIONS SUPPORTING MEDICAL RESEARCH CANNABIS:

American Cancer Society (1997)
American Medical Association (1997)
American Public Health Association (1994)
American Society of Addiction Medicine (1997)
Australian National Task Force on Cannabis (1994)
British Medical Association (1997)
British Medical Journal (1998)
California Medical Association (1997)
California Society on Addiction Medicine (1997)

Congress on Nursing Practice (1996)
Federation of American Scientists (1994)
Florida Medical Association (1997)
Gay and Lesbian Medical Association (1995)
Health Canada (1997)
Kaiser Permanente (1997)
Lymphoma Foundation of America (1997)
NIH Workshop on the Medical Utility of Marijuana (1997)
National Nurses Society on Addictions (1995)
North Carolina Nurses Association (1996)
San Francisco Medical Society (1996)

APPENDIX C

STATEMENTS OF SOME OF THE ORGANIZATIONS IN APPENDIX B

AIDS Action Council

DATE: November 1996

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "[The] AIDS Action Council supports the elimination of federal restrictions that bar doctors from prescribing marijuana for medical use by individuals with HIV/AIDS. . . . [The] AIDS Action Council supports reopening the U.S. Public Health Services Investigational New Drug Compassionate Access [Compassionate IND] program to provide access to medical-use marijuana for greater numbers of qualified patients."

* REFERENCE: "Resolution in Support of Access to Medical-Use Marijuana," adopted by the Public Policy Committee of AIDS Action Council, November 15, 1996

AIDS Treatment News

DATE: January 1998

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "The scientific case for medical [marijuana] use keeps growing stronger. Far more dangerous psychoactive drugs, like morphine, are successfully allowed in medical use. Somehow marijuana has become a symbolic or political hard line to be maintained by anti-drug believers regardless of human cost. The costs will mount until the public can organize itself to insist that those who urgently need this medicine can obtain and use it legally."

* REFERENCE: AIDS Treatment News, #287, January 23, 1998

American Academy of Family Physicians

DATE: 1995

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "The American Academy of Family Physicians [supports] the use of marijuana . . . under medical supervision and control for specific medical indications."

* REFERENCE: 1996-1997 AAFP Reference Manual – Selected Policies on Health Issues

American Cancer Society

DATE: July 1997

* POSITION: research

* SUPPORTING STATEMENTS: "[California Senate Bill] 535 focuses on medical marijuana research. [The] American Cancer Society . . . supports S.B. 535 because it is consistent with our long-held position of supporting research of any agent or technique for which there may be evidence of a therapeutic advantage."

* REFERENCE: letter from ACS to California State Senator John Vasconcellos (July 24, 1997)

American Medical Association (AMA)

DATE: December 1997

* POSITION: endorsement of a physicians' right to discuss marijuana therapy with a patient

* SUPPORTING STATEMENT: "The AMA believes that effective patient care requires the free and unfettered exchange of information on treatment alternatives and that discussion of these alternatives between physicians and patients should not subject either party to criminal sanctions."

* POSITION: research

* SUPPORTING STATEMENT: "The AMA recommend that adequate and well-controlled studies of smoked marijuana be conducted in patients who

have serious conditions for which preclinical, anecdotal, or controlled evidence suggests possible efficacy in including AIDS wasting syndrome, severe acute or delayed emesis induced by chemotherapy, multiple sclerosis, spinal cord injury, dystonia, and neuropathic pain."

* REFERENCE: Council on Scientific Affairs Report #10: Medical Marijuana

American Medical Student Association

DATE: March 1993

* POSITION: prescriptive access

* SUPPORTING STATEMENT: "The American Medical Student Association strongly urges the United States Government . . . to meet the treatment needs of currently ill Americans by restoring the Compassionate IND [Investigational New Drug] program for medical marijuana, and . . . reschedule marijuana to Schedule II of the Controlled Substances Act, and . . . end the medical prohibition against marijuana."

* REFERENCE: AMSA House of Delegates Resolution #12

American Preventive Medical Association

DATE: December 1997

* POSITION: prescriptive access

* SUPPORTING STATEMENT: "Marijuana should be available for appropriate medicinal purposes, when such use is in accordance with state law, and that physicians who recommend and prescribe marijuana for medicinal purposes in states where such use is legal, should not be censured, harassed, prosecuted or otherwise penalized by the federal government."

* REFERENCE: "Medicinal Use of Marijuana" policy statement: December 8, 1997

American Public Health Association

DATE: November 1994

* POSITION: prescriptive access and research
* SUPPORTING STATEMENT: "Understanding that marijuana has an extremely wide acute margin of safety for use under medical supervision . . . [and] concluding that greater harm is caused by the legal consequences of its prohibition than possible risks of medicinal use; therefore [the APHA] encourages research of the therapeutic properties of various cannabinoids and combinations of cannabinoids, and . . . urges the Administration and Congress to move expeditiously to make cannabis available as a legal medicine."
* REFERENCE: Resolution #9513: "Access to Therapeutic Marijuana/Cannabis"

American Society of Addiction Medicine (ASAM)

DATE: April 1997

* POSITION: prescriptive access and research
* SUPPORTING STATEMENTS: "Approved medical uses for marijuana or [THC] for treatment of glaucoma, illnesses associated with wasting such as AIDS, the emesis associated with chemotherapy, or other uses should be carefully controlled. The drug should be administered only under the supervision of a knowledgeable physician. Research on marijuana, including both basic science and applied clinical studies, should receive increased funding and appropriate access to marijuana for study."
* POSITION: endorsement of physicians right to discuss marijuana therapy with a patient
* SUPPORTING STATEMENT: "Physicians should be free to discuss the risks and benefits of medical use of marijuana."
* REFERENCE: ASAM "Statement on Marijuana," passed by ASAM Board of Directors: April 16, 1997

Australian National Task Force on Cannabis

DATE: March 1994

* POSITION: prescriptive access and research
* SUPPORTING STATEMENTS: "First, there is good evidence that THC is an effective anti-emetic agent for patients undergoing cancer chemotherapy. . . . Second, there is reasonable evidence for the potential efficacy of THC and marijuana in the treatment of glaucoma, especially in cases which have proved resistant to existing anti-glaucoma agents. Further research is . . . required, but this should not prevent its use under medical supervision in poorly controlled cases. . . . Third, there is sufficient suggestive evidence of the potential usefulness of various cannabinoids as analgesic, anti asthmatic, anti-spasmodic, and anti-convulsant agents to warrant basic pharmacological and experimental investigation and . . . clinical research into their effectiveness. " . . . Despite the positive appraisal of the therapeutic potential of cannabinoids . . . , they have not been widely used. . . . Part of the reason for this is that research on the therapeutic use of these compounds has become a casualty of the debate in the United States about the legal status of cannabis. . . . As a community we do not allow this type of thinking to deny the use of opiates for analgesia. Nor should it be used to deny access to any therapeutic uses of cannabinoid derivatives that may be revealed by pharmacological research."
* REFERENCE: Australian National Task Force on Cannabis: "The health and psychological consequences of cannabis use"

Bay Area Physicians for Human Rights

DATE: January 1997

* POSITION: endorsement of a physician's right to recommend marijuana therapy to a patient
* SUPPORTING STATEMENT: N/A

* REFERENCE: plaintiff in *Conant v McCaffrey,* a class action suit filed in federal court in San Francisco on January 14, 1997, seeking an injunction blocking federal officials from taking any punitive action against physicians who recommend the use of marijuana to their patients

Being Alive: People With HIV/AIDS Action Committee
DATE: January 1996
* POSITION: legal access under a physician's supervision; prescriptive access
* SUPPORTING STATEMENT: "Being Alive has always supported a person's right to choose their own treatment modalities including . . . efforts to legalize medical marijuana."
* REFERENCE: letter from Executive Director Gary Costa supporting the efforts of Californians for Compassionate Use (January 3, 1996)
DATE: January 1997
* POSITION: endorsement of physician's right to recommend marijuana therapy to a patient
* SUPPORTING STATEMENT: N/A
* REFERENCE: plaintiff in *Conant v. McCaffrey, supra.*
DATE: November 1997
* POSITION: prescriptive access to active chemicals in marijuana; research
* SUPPORTING STATEMENTS: "Present evidence indicates that [cannabinoids] are remarkably safe drugs, with a side-effects profile superior to many drugs used for the same indications. . . . [The BMA] will urge the government to] consider changing the Misuse of Drugs Act to allow the prescription of cannabinoids to patients with certain conditions causing distress that are not adequately controlled by existing treatments."
* POSITION: relaxation of present marijuana-law enforcement

* SUPPORTING STATEMENT: "While research is underway, the police, the courts, and other prosecuting authorities should be made aware of the medicinal reasons for the unlawful use of cannabis by those suffering from certain medical conditions for whom other drugs have proved ineffective."
* REFERENCE: BMA report: "Therapeutic Uses of Cannabis"

California Academy of Family Physicians

DATE: February 1994
* POSITION: prescriptive access
* SUPPORTING STATEMENT: "[The CAFP] supports efforts to expedite access to cannabinoids for use under the direction of a physician."
* REFERENCE: position statement adopted by the Academy's Congress of Delegates: February 1994

DATE: August 1996
* POSITION: legal access under a physician's supervision
* SUPPORTING STATEMENT: "CAFP's support of the Medical Use of Marijuana Initiative statute, Proposition 215, is in keeping with CAFP policy."
* REFERENCE: United Press International (UPI) News Service, August 8, 1996; January 8, 1998, letter to NORML from Communications Director Alison Barnsley outlining the CAFP's stance on medical marijuana

DATE: January 1997
* POSITION: endorsement of physician's right to recommend marijuana therapy to a patient
* SUPPORTING STATEMENT: "CAFP's amicus support of the [*Conant v. McCaffrey*] lawsuit is based on the narrow issue of the right of physicians to discuss any medical topics with their patients."
* REFERENCE: filed a *amicus* brief in *Conant v. McCaffrey*, January 8, 1998, letter to NORML

California Medical Association (CMA)

DATE: April 1997

* POSITION: endorsement of physician's right to discuss marijuana therapy with a patient
* SUPPORTING STATEMENT: "[The] CMA oppose any governmental threats against physicians arising from [the] discussion of medical marijuana in the context of the established physicians-patient relationship."
* POSITION: research
* SUPPORTING STATEMENTS: "The CMA urge that carefully designed, controlled clinical trials of the effectiveness of inhaled marijuana for medical indications be allowed to proceed immediately. . . . The CMA immediately initiate efforts at the federal level to facilitate the availability of inhaled marijuana for use in conducting clinical research to determine the medical efficacy of marijuana."
* REFERENCE: CMA Resolution #107a-97: Medical Marijuana

California Nurses Association

DATE: September 1995

* POSITION: legal access under a physician's supervision
* SUPPORTING STATEMENTS: "The California Nurses Association supports AB (Assembly Bill) 1529 which would eliminate California's prohibition against possessing marijuana or growing marijuana for individuals using marijuana for medical purposes. Many patients suffering from and receiving treatment for cancer, AIDS, glaucoma, and multiple sclerosis receive relief from using marijuana. Marijuana helps patients with nausea, vomiting and muscle spasms where other medications are not effective. Currently, these patients must break the law to use marijuana to relieve their symptoms. This measure is

a compassionate alternative for patients suffering from these diseases to obtain relief."

* REFERENCE: letter from CNA President Kurt Laumann, RN, to Gov. Pete Wilson (September 21, 1995)

California Society on Addiction Medicine (CSAM)

DATE: May 1997

* POSITION: federal rescheduling and research

* SUPPORTING STATEMENTS: "CSAM supports controlled studies of the medical usefulness of marijuana, including all routes of administration, and especially supports studies on the therapeutic effects of the essential ingredients . . . of cannabis sativa. . . . CSAM urges the DEA to remove cannabis from Schedule I and move it to an appropriate Schedule, below Schedule I as determined by what is known about its therapeutic benefit."

* REFERENCE: CSAM "Position on Medical Use of Marijuana in California" as it appeared in CSAM News, Spring 1997

Colorado Nurses Association

DATE: 1995

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "The Colorado Nurses Association recognize the therapeutic use of cannabis [and] support efforts to end federal policies which prohibit or unnecessarily restrict marijuana's legal availability for legitimate health care uses. . . . Marijuana must be placed in a less restrictive Schedule and made available to patients who may benefit from its use."

* REFERENCE: Colorado Nurses Association 1995 Conventional Directory and Book of Reports

Congress of Nursing Practice

DATE: May 1996

* POSITION: instructing RN's on medical marijuana; research

* SUPPORTING STATEMENT: "The Congress of Nursing Practice . . . support education for RN's regarding current evidence based therapeutic uses of cannabis, [and] support investigation of therapeutic efficacy of cannabis in controlled trials."

* REFERENCE: Motion passed by the CNP: May 31, 1996

Federation of American Scientists

DATE: November 1994

* POSITION: research

* SUPPORTING STATEMENT: "Based on much evidence, from patients and doctors alike, on the superior effectiveness and safety of whole cannabis (marijuana) compared to other medications for many patients – suffering from the nausea associated with chemotherapy, the wasting syndrome of AIDS, and the symptoms of other illnesses – and based on the lack of incentives for profit-seeking corporations to validate the effectiveness of a medicine that cannot be patented, we hereby petition the Executive Branch and Congress to facilitate and expedite the research necessary to determine whether this substance should be licensed for medical use by seriously ill persons."

* REFERENCE: FAS Petition on Medical Marijuana

Florida Medical Association

DATE: June 1997

* POSITION: prescriptive access

* SUPPORTING STATEMENT: "The FMA urge the state and federal governments and U.S. Public Health Service to open limited access to medical

marijuana by reopening the investigational new drug [Compassionate IND] program to new applicants."
* POSITION: research
* SUPPORTING STATEMENT: "The FMA shall urge Congress, the FDA, DEA and all other relevant governmental agencies to expedite unimpeded research into the therapeutic potential of smokable marijuana."
* REFERENCE: FMA Resolution #97-61

French Ministry of Health
DATE: December 1997
* POSITION: prescriptive access
* SUPPORTING STATEMENTS: "Obviously, it should be possible to prescribe [cannabis.] For a doctor, that could be a real benefit."
* REFERENCE: statements of French Health Minister Bernard Kouchner: *Independent* on Sunday, December 7, 1997.

Gay and Lesbian Medical Association
DATE: May 1995
* POSITION: research
* SUPPORTING STATEMENT: "[We] support . . . the authorization and implementation of clinical trials of marijuana for various aspects of AIDS treatment."
* REFERENCE: Gay and Lesbian Medical Association Policy Statement #066-95-104
DATE: February 1997
* POSITION: endorsement of a physician's right to recommend marijuana therapy to a patient
* SUPPORTING STATEMENTS: "The most essential aspects of productive patient physician relationships are trust, confidentiality, and truly informed consent for all potential therapies. . . . We thus feel strongly that any threats of negative repercussions on physicians who in good faith discuss the use of marijuana

for patients who might benefit from it are an inappropriate infringement of patient physician relations. We therefore urge most strongly that . . . Physicians should not be subject to sanctions for conducting such good faith discussions."

* REFERENCE: "Medical Marijuana: A Plea For Science And Compassion," joint statement issued by The Gay and Lesbian Medical Association and The San Francisco Medical Society

Health Canada

DATE: December 1997

* POSITION: prescriptive access and research

* SUPPORTING STATEMENTS: "There is no problem, basically, with marijuana as a medicine. . . . Marijuana is no different than morphine, no different than codeine, no different than Aspirin. There just has to be a process where we are able to say [doctors] have undertaken the right experiments and produced a result that shows the benefit is greater than the risk for the individual patients."

* REFERENCE: statements of Health Canada spokesman Dann Michols: *Ottawa Citizen,* December 19, 1997

Kaiser Permanente

DATE: April 1997

* POSITION: prescriptive access and research

* SUPPORTING STATEMENTS: "Medical guidelines regarding [marijuana's] prudent use should be established. . . . Unfortunately, clinical research on potential therapeutic uses for marijuana has been difficult to accomplish in the United States, despite reasonable evidence for the efficacy of tetrahydrocannabinol (THC) and marijuana as anti-emetic and anti-glaucoma agents and the suggestive evidence for their efficacy in the treatment of other medical conditions, including AIDS."

* REFERENCE: Kaiser Permanente study: "Marijuana Use and Mortality," American Journal of Public Health, April 1997

Life Extension Foundation
DATE: March 1997
* POSITION: prescriptive access
* SUPPORTING STATEMENT: "Those of LEF's members who are resident in Arizona, California, Connecticut, and Virginia and suffer terminal illness and intractable pain are denied by the federal policy the opportunity to receive relief from medical marijuana in accordance with state law."
* REFERENCE: Complaint for declaratory judgment and injunctive relief: *Durk Pearson and Sandy Shaw et al. v. Barry McCaffrey et al.*

Los Angeles County AIDS Commission
DATE: September 1996
* POSITION: legal access under a physician's supervision
* SUPPORTING STATEMENT: N/A
* REFERENCE: Resolution # unavailable

Lymphoma Foundation of America
DATE: January 1997
* POSITION: prescriptive access and research
* SUPPORTING STATEMENT: N/A
REFERENCE: Resolution # unavailable

Maine AIDS Alliance
DATE: December 1997
* POSITION: legal access under a physician's supervision
* SUPPORTING STATEMENT: N/A
* REFERENCE: *Bangor Daily*, December 30, 1997

Marin (California) Medical Society
DATE: February 1997
* POSITION: endorsement of a physician's right to recommend marijuana therapy to a patient
* SUPPORTING STATEMENT: N/A
* REFERENCE: filed in *amicus* brief in *Conant v. McCaffrey*

Institutes of Health (NIH) Workshop on the Medical Utility of Marijuana
DATE: August 1997
* POSITION: research
* SUPPORTING STATEMENTS: "The scientific process should be allowed to evaluate the potential therapeutic effects of marijuana for certain disorders, dissociated from the societal debate over potential harmful effects of nonmedical marijuana use. . . . Marijuana looks promising enough to recommend that there be new controlled studies done. The indications in which varying levels of interest were expressed are the following: appetite stimulation/cachexia, nausea and vomiting following anti-cancer therapy, neurological and movement disorders, analgesia, [and] glaucoma. Accordingly, the NIH should consider relevant administrative mechanisms to facilitate grant applications in each of these areas. Whether or not the NIH is the primary source of grant support for a proposed bona fide clinical research study, if that study meets U.S. regulatory standards . . . protocol approval, . . . the study should receive marijuana."
* REFERENCE: Workshop on the Medical Utility of Marijuana: Report to the Director

National Nurses Society on Addictions

DATE: May 1995

* POSITION: prescriptive access and research

* SUPPORTING STATEMENTS: "Cannabis has been used medicinally throughout the world for centuries. . . . As a medicine, cannabis has been found to be effective in a) reducing intraocular pressure in glaucoma, thus preventing blindness, b) reducing nausea and vomiting associated with chemotherapy, c) stimulating the appetite for AIDS patients suffering from the wasting syndrome, d) controlling spasticity associated with spinal cord injuries and multiple sclerosis, e) increasing comfort for persons suffering from chronic pain, and f) controlling seizures for persons suffering from seizure disorders. . . . As nurses, we have an obligation to advocate for optimal health care for all individuals. Medicine which enhances quality of life for persons suffering from life and sense-threatening illnesses should not be prohibited because some persons may develop a substance abuse and/or addiction problem to that medicine. Cannabis does have therapeutic value and has a wide margin of safety, and therefore practitioners should have the right to prescribe cannabis to patients when the potential benefits surpasses [sic] the health risks. . . . The National Nurses Society on Addictions urges the federal government to remove marijuana from the Schedule I category immediately, and make it available for physicians to prescribe. NNSA urges the American Nurses' Association and other health care professional organizations to support patient access to this medicine. . . . NNSA supports research regarding the various cannabinoids and combinations thereof, to determine the greatest therapeutic potential."

* REFERENCE: "Position Paper: Access to Therapeutic Cannabis," approved by the NNSA Board of Directors: May 1, 1995

New England Journal of Medicine

DATE: January 1997

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "The advanced stages of many illnesses and their treatments are often accompanied by intractable nausea, vomiting, or pain. Thousands of patients with cancer, AIDS, and other diseases report they have obtained striking relief from these devastating symptoms by smoking marijuana. . . . Federal authorities should rescind their prohibition of the medical use of marijuana for seriously ill patients and allow physicians to decide which patients to treat. The government should change marijuana's status from that of a Schedule I drug . . . to that of a Schedule II drug . . . and regulate it accordingly."

* REFERENCE: Editorial by NEJM editor Dr. Jerome Kassirer, January 30, 1997

New Mexico State Board of Nursing

DATE: June 1997

* POSITION: endorsement of a RN's right to discuss marijuana therapy with a patient

* SUPPORTING STATEMENT: N/A

* Reference: transcript of minutes: NMSBN June 19, 1997 board meeting

New York State Nurses Association

DATE: June 1995

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "Marijuana has been found to be effective in the treatment of glaucoma by reducing intraocular pressure and in reducing nausea and vomiting caused by chemotherapy. Marijuana has also been effective in stimulating the appetite of AIDS patients suffering from the wasting syndrome, controlling spasticity in spinal cord injury

patients, and in controlling seizures for persons suffering from epilepsy and for persons with multiple sclerosis. Marijuana is remarkably non-toxic. . . . The NYSNA Peer Assistance Committee agrees with the intent and content of the resolution Legalizing Marijuana for Medical Purposes."

* REFERENCE: "Position Statement on Medicinal Marijuana," passed by the NYSNA Board of Directors: June 7, 1995

North Carolina Nurses Association

DATE: 1996

* POSITION: prescriptive access and research

* SUPPORTING STATEMENTS: "[The] NCNA urges the Administration and Congress to make cannabis available as a legal medicine where shown to be safe and effective and to immediately allow access to therapeutic cannabis through the Investigational New Drug [Compassionate IND] Program. NCNA also supports research of the therapeutic properties and combinations of the various cannabinoids and alternative methods of administration."

* REFERENCE: "Position Statement on Therapeutic Use of Cannabis," adopted by the NCNA: October 15, 1996

San Francisco Mayor's Summit on AIDS and HIV

DATE: January 1998

* POSITION: prescriptive access

* SUPPORTING STATEMENTS: "Marijuana must continue to be available to persons living with AIDS and HIV and other diseases who wish to use it for pain management, appetite stimulation and other medicinal purposes."

* REFERENCE: "Mayor's Summit on AIDS & HIV," preliminary report released January 27, 1998

San Francisco Medical Society

DATE: August 1996

* POSITION: legal access under a physician's supervision

* SUPPORTING STATEMENT: "The SFMS takes a support position on the California Medical Marijuana Initiative."

* POSITION: research

* SUPPORTING STATEMENT: "This support position also contains the provision that controlled, blinded studies be conducted to determine both the real efficacy of smoked marijuana and its relative benefits and risks compared to Marinol."

* REFERENCE: Motion passed by SFMS Board of Directors: August 8, 1996

DATE: February 1997

* POSITION: endorsement of a physician's right to recommend marijuana therapy to a patient

* SUPPORTING STATEMENT: "We . . . feel strongly that any threats of negative repercussions on physicians who in good faith discuss the use of marijuana for patients who might benefit from it are an inappropriate infringement of patient physician relations. We therefore urge most strongly that. . . . Physicians should not be subject to sanctions for conducting such good faith discussions."

* REFERENCE: "Medical Marijuana: A Plea For Science And Compassion," joint statement issued by The Gay and Lesbian Medical Association and The San Francisco Medical Society

Virginia Nurses Association

DATE: October 1994

* POSITION: prescription access

* SUPPORTING STATEMENT: "The Virginia Nurses Association supports all reasonable efforts to end federal policies which prohibit or unnecessarily restrict marijuana's legal availability for legitimate

medical uses; and be it Resolved That the Virginia Nurses Association provide education to the nurses of Virginia on the therapeutic use of marijuana and federal prohibition of its use; and be it Resolved That the Virginia Nurses Association encourage other health care provider organizations to support medical access to marijuana."

* REFERENCE: Resolution passed by the VNA Delegate Assembly: October 7, 1994